

**MINUTES**  
**Approved by the Committee**  
**Occupational Licensing and Certification Laws Committee**  
**Tuesday, October 29, 2019**  
**1:00 P.M.**  
**Room EW41**  
**Boise, Idaho**

Cochair Lakey called the meeting to order at 1:00 p.m.; a silent roll call was requested. Members present: Cochair Todd Lakey and Senators Fred Martin, Lori Den Hartog, and Grant Burgoyne; Cochair Representative Gayann DeMordaunt and Representatives Robert Anderst, Randy Armstrong, and Elaine Smith (by phone); Legislative Services Offices (LSO) staff Matt Drake, Maggie Smith, Christine Otto, and Jennifer Kish.

Other attendees: Alex Adams, Misty Lawrence, Colby Cameron - Div. of Financial Management; Thomas Judge - Board of Licensure for Professional Engineers and Professional Land Surveyors (IPELS); Mike Kane - Board of Dentistry & IPELS; Liz Hatter - Veritas Advisors; MiChell Bird - Idaho Real Estate Commission; Kelley Packer, Rob McQuade - Idaho Bureau of Occupational Licensing (IBOL); Jeremy Brown - Idaho Board of Veterinary Medicine; Laura Lantz - Idaho Society of Certified Public Accountants (ISCPA); Bill Myers - Holland & Hart; Will Goodman - Idaho Digital Learning Alliance (IDLA).

NOTE: presentations and handouts provided by the presenters/speakers are posted to the Idaho Legislature website <https://legislature.idaho.gov/sessioninfo/2019/interim>; and copies of those items are on file at the Legislative Services Office in the State Capitol.

Cochair Lakey called Alex Adams, Administrator, Division of Financial Management (DFM), to the podium for an update from the executive branch regarding occupational licensing. Mr. Adams reported that the [Licensing Freedom Act \(LFA\) Update](#) had been released on September 30, 2019. In summary, the LFA update noted that there were 241 recommendations from the review required by E.O. 2017-06; of which, 86 recommendations (36%) had been accomplished as of September 30 and 85 more were expected to be completed by the year's end. He went on to report that one portion of Governor Little's [E.O. 2019-01](#) (LFA of 2019) required DFM to review at least five professions, vocations, or occupations - licensed by any executive branch - for the purpose of determining whether the continuation of such licensing was valid. Mr. Adams noted that DFM had already identified ten licenses that it would propose to eliminate with legislation (p. 3-4 of LFA Update).

- Cochair DeMordaunt inquired whether the division had received any feedback from the public on the report or on the proposed eliminations. Mr. Adams reported that his office had received none to date and shared that he attributed that fact to the transparency of the review and the collaboration with the agencies.

At 1:15 p.m., Cochair Lakey requested a motion to approve minutes from the September 27 meeting. Sen. Martin moved to approve the minutes; seconded by Rep. Anderst; approved by unanimous voice vote.

Cochair Lakey then called upon Matt Drake, Legislative Drafting Attorney for LSO, for presentation of his proposed draft legislation [DRMDD034](#), as edited from suggestions at the previous meeting. Mr. Drake first spoke on SECTION 1. 67-9408 OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW PILOT COMMITTEE.

- Sen. Martin inquired whether the language "primary duty and responsibility" (p. 1, line 34) meant that this was the only manner that an applicant could use for new licensing. Mr. Drake explained that sunrise reviews were the main purpose of the review committee; but as for the review committee being the only route for an applicant, he felt that committee members were still undecided whether other routes (e.g. germane committees) were still an option.

- Sen. Burgoyne expressed concern about the review committee being a "pilot" committee, in addition to it having a sunset clause. He felt it sent a message of uncertainty about the committee. He surmised that more positive language could be used (p. 2, lines 37-41) to explain the circumstances for an extension - noting that two years just did not seem a long enough for a trial. He observed that the reference to a form (p. 1, line 38) should add the language "to be approved by the committee"; additionally, the phrase "in a form" (p. 2, line 2) should read "on a form", which already had the phrase "approved by the committee." In paragraph (c), he preferred the term "sufficient" rather than "substantial" (line 10) and suggested an edit such as "to the health ~~or~~, safety, or welfare of the public to warrant the regulation proposed";. In (c)(ii), he suggested an edit of (line 12) "~~necessary to protect against present, recognizable, .... safety of the public~~ to meet the objectives of (c)(i);" to balance the justification. Sen. Burgoyne proposed adding a new subparagraph (iv) after line 16 to require/incorporate a cost benefit analysis and whether any anti-competitive consequences exist [renumber original subparagraph (iv) to (v)]. In paragraph (e), he proposed adding (line 25) "hold one (1) or more hearings," after "the committee shall". And in the same paragraph, make an edit (line 28) to read "issue by motion make a recommendation" and suggested that the recommendation should be forwarded to the germane committee - per the Speaker/ProTempore's assignment of the bill to a committee. Sen. Burgoyne theorized that an applicant, upon receiving a negative recommendation, could go directly to the germane committee, at which time any existing recommendation would be forwarded to the germane committee. And finally, he suggested adding "in the manner set forth in the application" after "regulated" (line 29). Sen. Burgoyne remarked that an applicant should have an opportunity to amend an application and re-apply, if able to meet the established deadlines.
- Rep. Anderst asked whether there had been any feedback from current committee chairs on this proposed process. Cochair DeMordaunt reported that Rep. Dixon commented that he was comfortable with the process as explained to him and remarked that it seemed beneficial to have a review before reaching the appropriate germane committee.
- Rep. Anderst asked for clarification that the review committee would make its recommendation to the appropriate germane committee rather than to the floor of the Legislature. Cochair Lakey felt that Sen. Burgoyne's earlier proposal of the recommendation being submitted to the Speaker or Pro Tempore, who would then make that recommendation available to the appropriate germane committee, was an appropriate approach. He submitted that language should be added to the proposed legislation to make that clear; Rep. Anderst agreed.
- Sen. Den Hartog noted that legislation often goes directly to a committee chair, and that the proposed 67-9408 did not seem to preclude an applicant for licensure to that. She observed that there may be a stigma attached to an application if the applicant did not go through the review committee and instead went directly to a committee chair. She also observed that while the review committee would assess the application and any analyses, it may not see the proposed legislation, which could contradict the earlier data presented to the committee.
- Cochair Lakey was in favor of removing any reference to "pilot" since there was already a sunset established. He proposed an edit to add (p. 2, line 22) "and submitted information" after "application". He supported Sen. Burgoyne's idea of adding balance and inserting the term "welfare" in subparagraphs (i) through (iii) (p. 2, lines 8-16). Cochair Lakey was satisfied with the proposed deadlines. He theorized that an applicant could have proposed legislation ready for the review committee and could or could not make edits as suggested by the committee, and he agreed that an applicant should be able to re-apply with the committee if it was possible to do so within the established deadlines. Considering that IBOL had indicated that there were a number of possible applications poised to occur, he was open to discussing the two-year existence of the review committee. And finally, he favored the review committee and the application process being required for any new licensing application.

- Cochair DeMordaunt proposed adjusting the deadline from November 1 to October 1 (paragraph (e)) to allow enough time to hold a public hearing(s) and allow for amendment of the application per the hearings.
- Sen. Martin, returning to the phrasing on page one, line 34, commented that "primary" did not necessarily mean "exclusive" and if the committee intended for the review committee to be the only manner in which an applicant could apply for new licensure then the wording needed to be more specific.
- Sen. Burgoyne felt that the review committee should be the only manner to apply for new licensure as it would be beneficial to have the same committee review each application, would benefit the germane committee to have had the application vetted for its thoroughness, and would assist the applicant in being prepared for the presentation to the germane committee. He hoped that legislation would be included in the application. And he offered an edit to strike "~~as a primary duty and responsibility~~" (p. 1, line 34) to eliminate confusion and redundancy; Cochair Lakey agreed with the edit, noting that the review committee was permitted other duties in subsection (5).
- Rep. Anderst was in favor of the application process but did not see the need for a new committee to do the review; he felt that the application process would be useful to a germane committee.
- Rep. Smith was in favor of removing the term "pilot" and having a review committee to vet the application before the germane committee.
- Sen. Martin was in favor of the review committee, per his own experience as a committee chair. He commented that it would have been helpful at times for the germane committee, in time and information, to have had the issue vetted before receiving it. He also noted that the application process may be helpful, rather than burdensome, to the applicant with the application form and noted deadlines to assist the organization of one's request for licensure.
- Cochair DeMordaunt was in favor of the request for additional information to be in the hands of the Legislature rather than with LSO, in keeping with each's role for legislation.
- Rep. Armstrong shared that the added process may be a burdensome step, which was in contradiction to the governor's current attempt to eliminate burdens for licensure; but he could see the benefit of one committee hearing all of the applications as it would become somewhat of an expert on the topic, much like other germane committees are on their topics.
- Cochair Lakey felt it appropriate that legislators be the reviewers who vetted the applications so as to be invested in the process, and possibly be proponents if proposed legislation went forward. He did not see the review committee as a burden, but rather, it was a manner to winnow out unnecessary licensing. He also supported the idea that the review would occur at a time when session was not upon the members.
- Rep. Anderst supported the application process to be required.
- Sen. Den Hartog acquiesced to the idea of the process being required but reserved the option for an applicant to approach a germane committee. She felt that the process would be beneficial to an applicant to work out ideas/issues before the proposed legislation actually went to the chamber floor; additionally, with a review committee, there would be more time to hear testimony from those in favor and those *not* in favor of the licensing/certification.
- Cochair DeMordaunt suggested that Mr. Drake prepare multiple versions of 67-9408 to review at the next meeting: one that would reflect the required application but use a germane or subcommittee, and one that would require the application and the review committee - with a sunset expectation.
- Cochair Lakey summarized that the committee would be in favor of two drafts and instructed Mr. Drake to incorporate the edits as discussed and to add a requirement for the applicant to include proposed legislation.

Mr. Drake then spoke on SECTION 2. 67-9409 UNIVERSAL LICENSURE.

- Rep. Anderst asked for clarification on the term "practiced" (p. 2, line 47). Mr. Drake requested that the committee provide more detail to define the scope of "practiced." Rep. Anderst proposed that it mean maintaining an "active status." Sen. Burgoyne noted that an individual who had an "inactive" status or was not practicing due to a disciplinary action could be issued a conditional license in Idaho.
- Sen. Burgoyne, in regard to requiring an applicant to take an exam (p. 3, lines 9-11), encouraged adding language to accept national exams as fulfilling the requirement. He commented that the language in lines 15-16 (p. 3) was confusing/unclear; and that the term "provisional" (line 19) should be "limited" to explain that the individual is limited in the scope of the practice. He inquired whether it was the intention of the committee to veer away from compacts, and if so, language should be added to indicate that.
- Cochair Lakey proffered that the term "practiced" should mean that one has an active license, no disciplinary action against them, and currently involved in practice - without setting quotas. He agreed with the switch of "provisional" to "limited," but wasn't sure how to delineate the limitation. He added that competency seemed more valuable than a written test, and that he preferred universal licensing over compacts, without compromising current compacts.
- Cochair DeMordaunt agreed with the "limited" over "provisional" license terminology. She felt that the boards could better determine/define the limits of active practice per their profession and that the limited license was relevant when the scope of practice was in question. She remarked that she did not believe it was the committee's intent to abandon or veer away from compacts.
- Cochair Lakey instructed Mr. Drake to replace "provisional" with "limited" and to incorporate other edits as discussed. Mr. Drake summarized that he would focus on what is "practice" and the limited license as it related to the scope of practice.

Mr. Drake then discussed SECTION 3. 67-9410 PREQUALIFICATION REQUESTS.

- Cochair DeMordaunt suggested that the turn-around time of 30 days (p. 4, line 4) be adjusted to 45 or 60 days to work better with other boards' meeting schedules.
- Sen. Martin inquired whether, as an applicant, even though all information was disclosed, it was possible that an applicant may still be denied a license (subsection (4)). Mr. Drake explained that subsections (1), (2), and (3) were in regards to a prequalification request process, whereas subsection (4) was in regard to a list of crimes that would be maintained by a licensing authority as a reference of crimes that would normally preclude an individual from being licensed - hence an individual may not pursue a prequalification request knowing this information.
- Cochair Lakey suggested these edits: subsection (3), add language such as "the individual engages in subsequent crime(s)"; (p. 4, line 11) add "and other facts and circumstances are not accurate"; and in subsection (4) to accommodate that some crimes are relevant to the inability to perform in a profession (e.g. child sexual offender not apply for teaching license).

Mr. Drake's last item was SECTION 4. 67-9411 EVALUATION OF CRIMINAL CONVICTIONS -- MORAL CHARACTER REQUIREMENTS.

- Cochair Lakey supported the language explaining that the terms "moral character," "moral turpitude," etc. were no longer viable but relevancy of a criminal conviction was; however, he added that he would still like to remove all references to those terms within statute. He was not comfortable with the use of "Notwithstanding" (p. 4, line 24), but did like the term "relevant" as it pertained to the requirement.
- Rep. Anderst inquired whether language was included to protect a board from liability in making these determinations. Mr. Drake remarked that there was not, though he was looking at language recently used in Ohio for such a situation.

- Sen. Burgoyne had these suggestions: (p. 4, line 30) after "(a)" insert "Where used in existing occupational licensing statutes (or rules) the phrases..." but cautioned not to eliminate all references, as some may be necessary; (p. 4, line 34) to strike "~~shall not be deemed to prevent ... criminally~~" and insert "shall not preclude a person with criminal convictions that are not" to be more clear; (p. 4, line 44) strike "~~offense~~" for "crime" to be consistent; (p. 4, line 45) "ability to perform the duties" should be a reference to one's fitness; (p. 5, line 2) need to explain *who* should provide the "clear and convincing evidence," probably the applicant; (p. 5, lines 13-16) missing the concept for balance and should take the licensee's own fraud out of the balance; (p. 5, line 17-22) insert "and any other relevant factors" to the listing. He expressed concern on vacated convictions, withheld judgements, and statute of limitations being exceeded on moral character items.
- Sen. Den Hartog reminded the committee that this proposed language was an attempt to assist the boards in defining these issues.
- Sen. Martin was in favor of the language used on page 4, lines 35-41, to explain relevancy.
- Cochair Lakey supported the edit of "duties" to "fitness" (p. 4, line 45); the edit for the burden of proof being the responsibility of the applicant (p. 5, line 2); to reword paragraph (b) in a positive manner with wording such as "The individual has demonstrated sufficient rehabilitation;"; to keep paragraph (a) as is, but was not supportive of (c) and (d) - delete, but maybe tie them into subsection (4) detailing how long ago the offense occurred, whether the sentence has been completed, etc.; and had same concerns as Sen. Burgoyne on subsection (5) but no clear idea on how to handle those situations.
- Cochair DeMordaunt echoed the removal of paragraphs (c) and (d) and the concerns about (5)(a), suggesting that it also be removed.
- Sen. Burgoyne observed that one could have multiple arrests without any convictions but it created a record of inappropriate behavior and surmised that such was the point of discerning the relevancy.
- Cochair Lakey remarked that the committee was trying to find a balance and it was easier to deal with convictions; however, inappropriate behavior or lack of a conviction was more difficult to define.

Having selected the next meeting dates, the meeting was adjourned at 2:35 p.m.